

Hurd, Richard, bp. of Worcester
THE

OPINION

OF AN

EMINENT LAWYER,

CONCERNING

The RIGHT of APPEAL

From the Vice-Chancellor of Cambridge, to
the SENATE;

Supported by a short historical Account of the
JURISDICTION of the UNIVERSITY.

In Answer to a late Pamphlet,
Intituled, *An Inquiry into the Right of Appeal from
the Chancellor or Vice-Chancellor of the University
of Cambridge, &c.*

*Is ne erret, moneo, et desinat laceffere.
Habeo alia multa, nunc quæ condonabitur;
Quæ proferentur post, si perget lædere.*

By a FELLOW of a COLLEGE.

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THE dispute concerning *Appeals*, which at present engages the Attention of the University of *Cambridge*, is apparently of such importance to the Peace and Welfare of that great Body; that it could not but be expected from any one, who proposed to deliver his Thoughts upon it to the World, that he should at least have taken care to inform himself perfectly of the Merits of the Question, before he presumed, in so public a Manner, to concern himself in it.

It must, therefore, surprize the Reader of a late *Inquiry into the Right of Appeal, &c.*

A

to

to find, that the Writer of it, whoever he be (for as he chuses to conceal his Name, I shall not take the Liberty to conjecture of it) should adventure to treat a Matter of this Consequence, without any distinct Knowledge of the State of the Case itself, or indeed without appearing to possess one single Qualification, which is required to do Justice to it. For the Question, discussed, is of such a Nature, that it cannot be determined, nor indeed tolerably treated by any one, who hath not a pretty exact Knowledge of the *History, Customs, and Statutes*, of the University; and who is not, besides, at least competently skilled in the *Civil and Ecclesiastical Laws*. And yet this Writer, as tho' nothing else was required of him, besides a confident Face, and willing Mind, boldly undertakes to decide upon it, under a perfect Incapacity in all these respects. Instead of an accurate Acquaintance with the Practice and Usages of the University, it appears, he had no further Knowledge of them, than what a few hasty and ill-considered Extracts from the Register had supplied him with. So far is he from being conversant in the Statutes of the University, that he blunders in every Attempt to explain the

the very easiest of them. And, as to his *Law*, he has only skimmed the Surface of it for a few frothy Terms, without giving the least Proof of his being possessed, in any Degree, of the Sense and Substance of it. This utter inability to discuss a Point, he had voluntarily undertaken, must be thought the more extraordinary in a Person, who, throughout the whole, assumes an Air of Authority; and tho' he professes modestly in his Title Page to *enquire*, yet, in effect, *prescribes* and *dictates* from one End of his *Pamphlet* to the other. The Tone of this Disputer, whatever becomes of his Reasoning, is all along decisive; and he *does and must insist*, as if he thought his very Word of Force enough to bear down all the Reason and Argument, that could be opposed to him.

Indeed the superior Airs he gives himself, on all Occasions, are not without their Use. For Persons unacquainted, as the generality of his Readers must needs be, with the Question itself, are readily enough inclined to believe, that a Person so *assured*, cannot be so entirely *ignorant* of the Merits of it, as in fact he is. And they who know better, cannot but apprehend somewhat from the assumed Authority of a Writer, who talks so big; however

his total insufficiency might, in other Respects, provoke their Contempt. For my own Part, I could not help considering him as a Person of eminent Dignity in the University; whose Rank in it might give him a Right to dictate to the School-Boys of the Place; for so he gives us to understand, he conceives of *the Members of the University Senate* (a). In pursuing my Conjectures further about him, I was sometimes inclined to think, from the very reverend Regard he every where professeth for the Heads of Colleges, that he must, himself, be one of that illustrious Body; and was led to excuse the Superiority of his Manner from reflecting, that a Habit of governing Absolutely in his own College, (for so he thinks Heads of Colleges have a Right to (b) govern) had insensibly inspired that despotic Style and Language, which were so disgusting, and had looked so ungracefully, in any other. But then, again, my profound Respect and Esteem of that venerable Order, and my actual Knowledge of the great Talents, with which these reverend Personages so worthily preside in their high Places, would not suffer me to imagine, that any of their Number could be so unqualified to treat a

(a) Page 70.

(b) Page 12.

Matter of a merely Academical Nature, as this Writer had shewn himself to be ; and especially, as it immediately concerned their own Authority, which they so assiduously study, and so perfectly understand, On the whole, I was forced to dismiss this Conjecture, as having no reasonable Foundation to rest upon ; and, in perfect Civility and good Manners towards a Set of Men, for whom I have so sincere an Honour, could only conclude him, at last, to be some weak and shallow Pedant ; unknown and uncountenanced by *them* ; whose Vanity had done him an ill Turn ; and thrust him unadvisedly on a weighty Office, which he had no Warrant, as he had no Abilities, to discharge.

Under this Opinion both of the Writer and his Performance, which as the Reader sees, I took not up upon slight Grounds, it was not likely I should ever think of giving myself the least Trouble about either ; much less that I should believe it worth the while to undertake in form, the Examination of a foolish Pamphlet, which indeed I had hardly Patience enough to peruse. The Truth is, it had lain for ever unnoticed by me among the Rubbish, which, of late hath so oppressed the Publick, on the Subject of our Academi-
cal

cal Disputes; or, at least, had been left for some future ACADEMIC to discourse of, at his Leisure; had it not been for the *Opinions* of two truly learned and respectable Lawyers; which the *Inquirer* has thought fit to interperse, as a little needful Seasoning, in his insipid Performance; and which, indeed, give it all the Real Weight and Authority, it can possibly carry with it to Men of Sense.

The *Inquirer*, as supposing these Gentlemen to afford some Countenance to the good Cause, he is maintaining, thinks fit, on the Mention of their Names, to drop his Crest a little; and, in a lower Tone of Voice than usual, affects to treat them even with some Appearance of Respect. Yet this he does in so aukward a Manner, as shews it was not usual or familiar to him, to descend to such Submissions; for, as the Height of that Civility, which he was willing to express towards them, he chuses to distinguish them only by the title of the *Gentlemen of the LONG ROBE*. What Impression the Idea of a Sweeping Train may possibly make on the Phantasy of this Writer, I know not; but I, who am more concerned about the *Heads* than the *Tails* of these learned Gentlemen, should have thought it an apter Compliment to have
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turn'd our Attention the other Way. Unless, perhaps, he was secretly conscious, that by a little unfair Dealing in the Proposal of the *Queries*, in Relation to which their Opinions were asked, their Answers themselves did no real Honour to the more essential Part of a great Lawyer, and so was willing to pin the Credit of them intirely on their *Gowns*. In plain Truth this was the very Case, as will appear from the *Queries* themselves, and the *Answers*; together with a few Observations, which I shall beg Leave to subjoin to them.

“ After stating the 42^d and 48th of Queen
 “ *Elizabeth's* Statutes, some Circumstances
 “ of Mr. *A*—'s Behaviour, and that an Appeal
 “ of the same Nature with his was not quite
 “ unprecedented, the two following *Queries*
 “ were put, [*Inq. p. 28.*]

“ Qu. I. Whether, in this Case, the Vice-
 “ Chancellor and his Assessors have not
 “ acted solely under the 42^d Statute,
 “ *de Cancellarii Officio*; and whether
 “ any Appeal can lie against the Suspen-
 “ sion of *A*. by Virtue of that Statute? or
 “ whether this Case must be deemed
 “ one of the *Causæ forenses*, and of Con-
 “ sequence subject to an Appeal by Virtue
 “ of

“ of the 48th Statute, *de Causis Foren-*
 “ *sibus?*

“ Qu. II. Whether, if in the Case above
 “ stated, the said *A*— hath a Right to
 “ Appeal from his Suspension; the same
 “ Right of Appeal will not follow to
 “ every delinquent Scholar, who shall
 “ be punished a trifling Mulct or Piece
 “ of Exercise by the Vice-Chancellor?

After stating, says he, the 42d, and 48th
 Statutes, &c. Whence it appears, that no
 other Evidence was laid before the Law-
 yers, with Regard to the Right of Appeals,
 than certain Extracts from *Q. Elizabeth's*
 Statutes: Which was not the most certain
 method of obtaining an accurate Decision.
 For, tho' the Queen's Statutes alone, as we
 apprehend, afford *sufficient* Evidence of our
 Right, yet they are by no Means, as will
 presently be seen, the *whole* Evidence.

But, waving this Consideration, let us come
 directly to the *Queries* themselves. The *first*
 is a Master-Piece in its Kind, and may be of
 Use to instruct future Querists, how to pro-
 pose their Doubts in the most convenient
 Manner.

For instead of asking the Lawyers, whether
 the Powers, given in the 42d Statute are sub-
 ject

ject to appeal, the Question is put to them, whether in suspending Mr. *A*— they had acted under that Statute? Again; instead of Inquiring whether the *Jurisdiction* given in the *two Statutes* be the same or different, the Query is (on Supposition of a Difference) to which Class of Tryals Mr. *A*—'s case belonged? In short, the Lawyers were made to believe, that this was the main Point in Dispute, whether the Case before them was of a *criminal* or (as the *Inquirer* expresses it) of a *forensic* Nature.

It would have been hard indeed, if a Design so well laid, and so artfully conducted, had failed of Success. Accordingly, we find both the Lawyers expressly declaring, that the Case in Question belonged to the *42d Statute*, and from thence seeming to infer, that an Appeal is not to be allowed.

Answers to the Queries.

“ To Q. I. I am of Opinion, the Vice-Chancellor's Authority in the Case above stated, is well founded by the *42d Statute, de cancellarii Officio*, and that the Vice-Chancellor and his Assessors acted under that Statute; and that this Case does not fall under the

“ 48th Statute. And I am of Opinion,
 “ that an Appeal does not lye in the
 “ present Case.
 “ To Qu. II. This in Effect is answered
 “ by what I have said upon the first
 “ Question. And if an Appeal might
 “ be allowed in the present Case, it
 “ would be of most fatal Consequence
 “ to all Discipline in the University;
 “ since it would take away all Distinct-
 “ ion between the two Statutes; and
 “ every Scholar, who should fall under
 “ any Censure or Punishment inflicted
 “ by the Vice-Chancellor, might have
 “ his Appeal, and the 42^d Statute would
 “ be entirely of no Effect.

Dec. the 12th 1750. W. N—

“ To Q. I. Upon Consideration of the two
 “ Statutes above recited, it seems to me
 “ that the first was calculated to give a
 “ Jurisdiction and Power to the Chan-
 “ cellor, or in his Absence to the Vice-
 “ Chancellor, to interpose in criminal
 “ Matters, *i. e.* in Matters relating to
 “ Discipline: The latter gives a Jurisdi-
 “ ction or Cognizance in civil Matters,
 “ *i. e.* Matter of Controversy concerning
 “ civil

“ civil Rights: and therefore the first
 “ gives Power, *Contumaces, &c. suspensione Graduum, carcere, aut alio leviori supplicio judicio suo castigare*: by
 “ the latter, Power is given to determine
 “ *Causas et lites, viz. Causas forenses*,
 “ for that is the Title of the Statute. As
 “ to the first, I think that the Jurisdiction is final in the first Instance; for
 “ his Power is *Judicio suo castigare*;
 “ and it must necessarily be so, for immediate Imprisonment seems to be one
 “ of the Punishments, which he may
 “ inflict, against which there can be no
 “ Appeal, for it may be executed before
 “ there can be any Appeal. As to the
 “ other, viz. the civil Jurisdiction, there
 “ the Statute requires speedy Determinations, but gives an Appeal from his
 “ Sentences in *Foro*, and prescribes the
 “ Manner of Appealing. Upon these
 “ Principles, I think that no Appeal can
 “ lye, the Suspension of *A*— being
 “ grounded, I think, on the Statute *de Cancellarii Officio*; and that this is
 “ not *Causa forensis* within the latter
 “ Statute,

“ To Q. II. If all Offences against the Sta-
 “ tutes are punishable by this Statute,
 “ the Punishments for the *minora*, as
 “ well as the *majora delicta*, would be
 “ appealable; which I think would be
 “ absurd.

Linc. Inn, Dec. the 13th 1750.
R. W—.

It is seen, that both these Opinions rest on one common Foundation, viz. that the 42d Statute gives Authority in none but *criminal*, the 48th in none but *civil* Causes. Now if this Support shall appear to be wholly imaginary, all that is built upon it must fall to the Ground. Let us proceed then to examine the Statutes themselves; or rather simply to represent what is contained in them. We shall have no Occasion for nice Distinctions, or remote Inferences; the plain literal Sense of the Passages to be cited will overthrow, at once, the Principle we are opposing; will afford such an Evidence as cannot be resisted, until a Method of interpreting shall be found out, wholly independent on the received rules of Criticism and Grammar.

The 42d Statute is entitled *De Cancellarii officio*; and contains an Enumeration of the various

ous Powers conferred on him by the University. It gives him a Right to hear and decide controversies; to call Congregations; to give and refuse Degrees; to punish the Transgressors of the Statutes; to see that the University Officers do their Duty; to inflict Censures on some particular Sorts of Offenders, therein named, in some Cases with, in others without, the Consent of the Heads; to give or refuse Leave to Members of the Senate to go out of a Congregation, before it is ended, and to impose a Mulct on those who depart without Leave; to require the Presence of Regents and Non-regents at Congregations and Conciones ad clerum; and to punish the Absent; and lastly, to make new Statutes with the Consent of the University.

Now I think I may safely refer it to any Reader, whether the single Design of this Statute was to convey Authority in *criminal Causes*? Or, whether it be not manifestly an Enumeration of the various Branches of the Chancellor's Power, intended to give, at once, a general View of the whole?

If any one shall think that the Administration of *civil Justice* is not here included, I must desire him to read again the very *first* Clause. *Cancellarius potestatem habebit ad OMNES—*
controversias

controversias——*tum audiendas tum dirimendas*. Nothing sure but the most outrageous Zeal for a desperate Cause can make any one affirm, that the Word *Controversias* is necessarily confined to the *Tryals of Offenders*. But if not, then the Statute gives Jurisdiction of both Sorts, in civil as well as criminal Causes.

With as little Foundation has it been asserted, that the Jurisdiction given in the 48th Statute relates only to *civil Causes*. The single Ground of this Assertion is the Title of the Statute, *viz. de causis forensibus*. It happens that a certain Set of Men, by endeavouring for a long Time to deceive others, have in the End deceived themselves. For I would, in Charity, suppose them to be sincere, when they translate *Causæ forenses*, *Causes between Party and Party*. It is true, no such use of the Words can be found in antient Authors; or, in what might have been more convincing to them, modern Dictionaries. But what then? Admitting that a School-boy would have construed these Words *Tryal in Court*, or *public Tryals*, yet this sure cannot be alledged as a Precedent to grave and wise Men: much less can it be expected they should reverence Quotations drawn from Hea-
then

then Writers, who had no Idea at all of the Ways of supporting Discipline in an University.

But if the *Title* of the 48th Stat. will not confine the Jurisdiction it gives, what shall we say to the Statute itself? It begins with these plain Words, never afterwards restrained or limited, *OMNES causæ et lites, quæ ad Universitatis notionem pertinent, tam Procancellarii quam Commissarii judicio subjiciantur*. If this Clause be not general, I should be glad to know, whether a general Clause be possible? Whether any Words can be invented of sufficient Extent to include Trials of every sort? But it is not indeed to be thought strange, that the same profound Critics, who would confine *omnes controversiæ*, to *criminal* Causes, should confine *omnes causæ et lites* to *civil* Causes only.

After all, I have a good Mind to give up this Point, for the Sake only of trying the Experiment, what Advantage can be made of it: Let it, then, be supposed, that the Jurisdiction given in the 48th Stat. and the Appeals allowed in it, belong only to *civil* Causes; and let it be further supposed, that
the

the 42^d Statute relates meerly to *criminal Causes*. What will follow? That the Q's Statutes allow no Appeals, for *that the Omis-
sion in this Statute amounts to a Prohibition?* Nothing can be wider from the Truth, than this Conclusion. For, 1st. the Powers given to the Chancellor may not be exercised in an arbitrary Manner, but in strict Conformity to the Customs and Privileges of the University: If this Restriction were not always to be understood, the Chancellor might confer *Degrees* by his *sole* Power; for no mention is made in the Statute of the Consent of the University. The Powers then, here given to the Chancellor, are to be *limited* by the known Rights of the *Senate*; and among these Rights no possible Reason can be given why that of *Appeals* should not be included: a Right (as will presently appear) of very great Antiquity, perhaps not less antient than the University itself. 2^{dly}. The very same Clause which impowers the Chancellor to judge *omnes controversias Scholasticorum*, that is (as we are now to render the Words) *all Offences committed by Scholars*, requires him to judge *secundum jus civile et eorum privilegia et consuetudines*: and consequently to
judge

judge not finally, but under an Obligation of having his Sentence *re-examined* on an Appeal made to the University.

There is another Argument in Mr. *W—*'s Opinion, which seems indeed, at first sight, to be more specious. He observes, that the Chancellor is to punish *Contumacy* and some other *Offences judicio suo*, and seems to think these Words might be intended to prevent *Appeals*. But the learned Person must excuse my differing from him, also, upon this Head. The Queen's Statute *de Off. Cancell.* is copied, with some Alterations, from a Statute upon the same Subject in the *first* Collection, she gave the University; as that was *verbatim* from one of King *Edward's*. In this Statute the Chancellor was impower'd to punish *judicio suo et assensu majoris partis præfectorum Collegiorum*; that is, he was appointed Judge, they *Assessors*. But the latter Statute of *Q. Elizabeth* distinguished these Punishments into two sorts, regard being had to the Importance of the Punishments themselves, and to the Rank and Condition of the Offender. In Causes of less Moment, and towards Offenders of inferior Rank, the Chancellor was to proceed *judicio suo*: in others, *non sine consensu præfectorum Collegiorum*. These

two Clauses being so manifestly *opposed*, we cannot surely mistake, if we interpret the former *by his sole Judgment* or *by his single Authority*; and suppose, that nothing further was intended, than to enable him to pass Sentence *without* (c) the concurrence of the Heads. A Circumstance, which will never shew that his Decision ought to be *final*.

There is one point more in which I cannot help dissenting from the Gentleman last named. He seems to think, there can be no Appeal from a Sentence of Imprisonment; because such Sentence is to be executed *immediately*. But I need not observe to so good a Judge, that an Appeal *apud acta* may suspend this execution; and he has not favoured us

(c) Or, by *Judicio suo* may be understood, that the Chancellor is empowered to inflict which of the several Censures, mentioned in the Statute, he shall think fit, on Offenders. The Words are *ignavos &c. suspensione graduum, carcere, aut alio leviori supplicio. JUDICIO SUO castigandos*. And the same is the meaning of *PRO ARBITRIO SUO* in the Statute *de Officio Procuratorum*; on which the *Inquirer* affects to lay some Stress, [p. 32.] “*Eum, qui deliquerit, primò pecuniâ præfinitâ multabit; iterum delinquenti duplicabit multam; tertio vero si deliquerit, gravius, pro ARBITRIO SUO, coercebit.*” But take it in which Sense you will, either of *passing Sentence by his single Authority*, or *determining the kind of Punishment at his Discretion*, neither way can this Expression be made to serve the Cause in hand. No Art of construction can pick, out of the Words *judicio suo*, the sense of *Final Determination*.

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with his Reasons why this Manner of Appealing may not be allowed (as it always has been allowed) in the University.

As to the *second Query*. it is a doubt altogether superfluous ; and seems to have been proposed for no other Reason, than to obtain Opinions concerning the *Expediency* of Appeals ; which is not surely a Point of *Law*. The learned Gentleman, who has declared his Sentiments on the Question, must therefore pardon us, if we do not receive them with the same Deference, as if the Subject had fallen within the proper Limits of his Profession.

But I think it unnecessary to dwell any longer on these *Queries*, or the *Answers* to them ; since it is clear, that the learned persons were abused by a partial and unfair Representation of the Case ; of which had they been fully informed, as they should have been, by laying before them a just View of the Question in debate, and by furnishing them with the proper Materials to decide upon it ; there is no Reason to doubt, that Persons, so eminently qualified to judge of all Disputes of this Nature, would have given much more satisfactory Opinions about it, and such as the University might safely admit, as decisive in the present Case. And I think my-

self authorized to say this the more confidently, as it luckily happens, that the *proper* Queries concerning this very Point were, some Years ago, put more honestly by a very excellent Person, at that time Vice-Chancellor of the University; and therefore, answered very *differently* by the greatest Lawyer of this or any Age; from whose Decision tho' there lies an Appeal, yet his Sentence never *was*, as indeed, no good Man had ever Cause to wish it *should* be, reversed.

These Queries together with the Answer of this great Person to them, I purpose laying before the Reader, as a full and perfect Confutation of all that has been yet advanced against the *Right of Appeal to the University*; and as carrying with it more Authority, than any thing which the most knowing academical Advocate could possibly say for it. But, that the Reader may come the better prepared to judge of the Merits of his Determination, and as some further Support to it for the Satisfaction of such, as are unacquainted with the State of the Case itself, I have judged it not improper, in the first Place, to draw together a *brief, historical Account of the Jurisdiction of the University*; collected from authentic Monuments, which are well known to such as
are

are versed in academical Matters ; and which, if there shall be Occasion, will be produced at large, in a more proper Place.

The University of *Cambridge* was possessed of a Jurisdiction over its own Members, as *Clerici*, many Years before *any* was granted to it by Charter from the Crown. This Jurisdiction, being Ecclesiastical, seems to have been originally derived from the Bishop of the Diocese. The Causes, cognisable by the University, were chiefly Causes of Correction ; the Rule of proceeding in the Court, was the Ecclesiastical Law, and Statutes of their own making, consonant to that Law. The Censures inflicted upon Offenders, were either Ecclesiastical, viz. *Excommunication*, *Suspension*, &c. (*d*) or such as were appointed by the Statutes for particular Crimes: And the

(*d*) The Ignorance of the *Inquirer*, who asserts, that the University has nothing to do with Ecclesiastical Censures, and that *Suspension* from Degrees, in particular, is a Punishment merely Academical [p. 26.] is amazing. Had he been in the least qualified to treat the Matter he has undertaken, he would have known, that *Suspension* is not merely an Usage of the University Court, as such, but was practised by the Ecclesiastical Court of the Bishops or Archbishops, as long as they had Jurisdiction in the University. To let in one Ray or two of Light, in mere Compassion, on that utter Darknes, which environs him, and shuts out all Law, Canon as well as Civil ; I will just refer him to *Arundel's Constitutions* in a provincial Council ; where Members of the University, offending in the Premises, are declared *suspendit, ab omni actu Scholastico*, and deprived, *ab omni privilegio Scholastico*. [Lyndwood, de *Hæret.* cap. *Finaliter.*] and the same appears in a Constitution of Archbishop *Stratford*. [Ib. De *Vit. & Honest. Clericorum*, cap. *Exterior.*]

Names

Names of *Places, Offices, Pleaders*, the same as are used in Ecclesiastical Courts to this Day.

This Jurisdiction was not usually exercised by the University in its *collective* Capacity. But a particular Officer was empowered to exercise it, under the Name of *Chancellor*; who, as *official (e)*, acted by an Authority derived to him from the University, was accountable to them for the Use of it, and liable to have his Acts annulled at their Discretion; every Person who thought himself aggrieved by the Chancellor, being at Liberty to apply to the Body for Redress.

When an *Appeal* was brought before the University, they usually authorized Delegates to hear and judge it, as was agreeable to the Practice in other Ecclesiastical Courts.

The Jurisdiction here described, was not originally independent; for no Academical Decision appears to have been *final*. An Appeal always lay from the Judgment of the University by their Delegates, to the Bishop of the Diocese, till the University was exempted

(e) So Mr Attorney General *Yorke*, in his *Argument for the University in Dr. Bentley's Case*,—"The Congregation are to be considered as the Judges of the Court, and the *Vice-Chancellor*, as their *Official*." The *Inquirer* hath himself desired the Reader to observe [p. 10.] that the *V. C.* in the Absence of the *Chancellor*, hath all the Power, which the University delegates to this great Officer.

from

from his Authority, and their Jurisdiction made *final* by Royal Charters, confirmed by Act of Parliament.

In the Reign of *Hen. III.* Attempts were made to carry Appeals *directly* from the Chancellor to the Bishop, and so to pass over the Appeal to the University, which ought to have been an intermediate Step. But *Hugh de Balsam*, Bishop of *Ely* (the Founder of *Peter-House*) by a Rescript dated *Dec. 1264*, entirely frustrated all such Attempts.

Hitherto, the Appeals to the University had been from *Causes of Correction and Censure*. The University was not, as yet, possessed of Jurisdiction in civil Causes. Scholars were first allowed, to implead the Burgeses and other Laics of the Town of *Cambridge*, in all Kinds of Personal Actions, before the Chancellor of the University, *Anno 33 Edw. I.* From that Time, the University began to acquire a civil Jurisdiction, which, by Degrees, was enlarged and established by Grants from the Crown in succeeding Reigns. And now, in consequence of this Jurisdiction, Appeals were extended from criminal to civil Causes. Accordingly in a Rescript of *Simon de Montacute*, Bishop of *Ely*, which bears Date, 16
Cal.

Cal. April, Anno 1341, there is exprefs Mention of Appeals to the Univerfity, in *Caufes of both Kinds*. For the Design of this *Reſcript* is to commiſſion the Univerfity to determine *finally* in all *civil* *Caufes*, without a further Appeal to his Court; and to prevent frivolous and vexatious Appeals, from the Univerfity to him in *criminal* *Caufes*, by laying the Appellant under the Obligation of an Oath.

This Addition of *civil* Power did, by no Means abrogate, or leſſen the *Spiritual*. We find, in the Reign of *Hen. VI.* that all Sorts of Eccleſiaſtical Authority were adjudged to belong to the Univerfity, by the Prior of *Barnwell*, the Pope's Delegate: and it was then made appear, that all theſe Branches of Power had both been claimed and exerciſed, Time out of Mind. It is certain, the *Probate of Wills* hath at all Times belonged, and ſtill belongs to the Univerfity. The Power of *Excommunication* was exerciſed as late as the Reign of *Hen. VIII.* and the Power of *Absolution* is exerciſed at this Day. This Ceremony is conſtantly performed on the concluding Day of each Term. And here, to obſerve it by the way, gentle Reader, a goodly and reverend Spectacle it is, to behold

hold the spiritual Head of our University, spreading his paternal Hands, like another Pope, over his erring and misguided Flock, who, in all Humility, receive his ghostly Absolution on their Knees.

It is true, the new Objects of Litigation, introduced by the royal Charters, occasioned an Alteration in the *Law* of the University. For the ecclesiastical Laws did not suffice for the Decision of Controversies about civil Rights, particularly Contracts between Scholars and Townsmen, and Breaches of the Peace. From the Time, therefore, that these new Causes came before the Chancellor, to the Reign of *Edward VI.* his Court was directed, as our spiritual Courts are now, by a mixt kind of Law, made up of canon and civil Law (*e*). Yet this must not be un-

(*e*) That his Court was directed by this Law, appears from a Determination of Delegates, concerning *second Appeals in the same Cause*, which I will take the Liberty to transcribe.

De Appellationibus a Delegatis.

In Dei nomine, Amen. Nos D. Buckmaister, Inceptor Dakyns, Mri. Myddylton, Longforth, et Pomell, autoritate nobis ab Universitate commissâ, decernimus ac pro firmâ sententiâ determinamus, quòd liceat unicuique in suâ causâ appellare a Judicibus Delegatis per Universitatem ad eandem Universitatem, modò id fiat juxta juris exigentiam, hoc est, si antea ab eodem secundâ vice in eadem causâ appellatum non fuerit. Quod si antea bis appellaverit, neutiquam tertio appellare licebit, quum id prorsus sit vetitum *tam per Jus Civile quàm Canonicum*: Cæterum unicuique tam actori quàm reo maneat sua libertas appellandi in suâ causâ a Judicibus Delegatis per Universitatem modo supradictò et a jure præscripto. [*Lib. Proc. Jun. fol. 132.*]

D

derstood

derstood without Restriction. For the University, like other Corporations, had all along a Power of making *local Statutes*; and not unfrequently particular *Usages* acquired the Force of Statutes from long Continuance.

But whatever Changes were made either by express Statute or in consequence of a more extended Jurisdiction, the Practice of Appealing from the Chancellor to the University still continued; only, as was observed, with this Difference, that it now was allowed in civil, as before it had been in criminal Causes.

The Right of Appeal, which then subsisted, received a fresh Confirmation from the Statutes made by the University itself. In these Statutes the Right is not only referred to and presupposed, but Directions are given in Regard to the Manner of exercising it (*f*): which Directions, till cancelled by succeeding Statutes, established the Right, as effectually, as if it had been originally introduced by Statute. The times, when many of these Statutes were made, cannot be fixed; but it is certain, they were collected and transcribed into the Proctor's Books, between the Year 1490 and 1500.

(*f*) See old Statutes *De Judiciis et Foro scholarium*; *De pœnis Appellantium*; *De tempore prosequendi Appellationes*.

In the Reign of *Edward VI.* a Body of new Statutes was given in a Visitation under an ecclesiastical Commission; which enjoined, among other Things, that the Jurisdiction of the University should be directed by the *civil Law*; that is, as every one understands, a Mixture of the civil and canon Law, or what *Oughton* calls *Jus Ecclesiastico-Civile*; the same which prevails in all ecclesiastical Courts to this Day. And, in the 1st Year of *Q. Elizabeth*, Statutes were again given to the University in a Visitation under a like Commission; which were almost an exact Transcript of those before given in the Reign of *Edward VI.* The Right of Appealing from the Chancellor to the University, received no Alteration from these Statutes. For there is no Clause in either of them, by which such Appeals are forbidden or even restrained. Accordingly, the Practice appears to have continued to the time, when *Q. Elizabeth* gave her *second* Body of Statutes (under the Broad Seal, indeed, but not by Visitors under ecclesiastical Commission) which was in the Year 1570. What Alterations have been made by these, or by the Practice of later Times, remains to be considered.

It is plain from several Passages in Q. *Elizabeth's* new Statutes, that many of the ancient Statutes and Customs of the University were designed to be continued ; and in Stat. 50. we have a Direction given, by which we may understand, what Statutes and Customs were to be preserved, and what not. Those only she declares to be taken away, *quæ Scripturis Sacris, institutis nostris, istis statutis adversari videbuntur*. Of which number the Practice of Appealing from the Chancellor to the University was not one.

There is, besides, the less Reason to imagine this Practice was abolished, because, in Stat. 42, the Queen requires all Causes to be heard and determined *secundum jus civile* ; and in her Charter to the University, confirmed by Act of Parliament, *secundum leges et consuetudines suas, ante tunc usitatas*, which, as appears, were agreeable to the *civil Law*. This *Law* allows Appeals in Cases of Correction and Censure, and therefore it is *certain* that Appeals were allowed by Q. *Elizabeth*.

Indeed nothing but a clear and express Prohibition could make us imagine, that the Right of Appealing, a Right of particular Importance, was designed to be either wholly abolished, or restrained only to civil Causes. And such Prohibition, had it been the Queen's
Intention

Intention to forbid Appeals in any Case, might the rather have been expected; as in the 48th Stat. where several Directions are given concerning Appeals, *one* antient Usage of the University, (g) in relation to them, is expressly forbidden: *nec secunda provocatio omnino admittatur*. Yet she gives not the least Hint of restraining Appeals to any particular Sorts of Causes: which surely were an unaccountable Omission in this Place, had she actually intended to lay them under any such Restriction. And, indeed, it is evident from a *MS.* of unquestioned authority, that neither the Body of the University, nor the Heads themselves (some of them supposed to have been concerned in compiling the Statutes) had the least Imagination of such Restraint. What I mean is a *MS.* in *C.C.C. Library*, containing *some Complaints of several of the Body of the University, in the Year 1572. against Q. Elizabeth's Second Edition of Statutes, and the Answers of the Heads, &c.* One of their Complaints is *the frustrating Appellations*, by transferring the Power of nominating Delegates from the *Proctors*, in whose Hands it was before lodged, to the *Caput*; and by encreasing *the Forfeit of Appeals*, from a very in-

(g) See *Determination of Delegates*, before cited, p. 25.
considerable

considerable Sum to 20 s. with an Addition of 2 s. to be paid to the Proctor; an Expence, which, as was then urged by the Body, would prevent *poor Scholars injured, from the Benefit of appealing, having not so much Money.* What, now, is the Answer of the Heads to this Complaint? Why, that *for the Stay of the Quietness of the University,* it was necessary to lay Appeals under these Restrictions. Not a Syllable is said against the Right of Appeal itself in any Case; though the Complainants had expressly set forth the Importance of having Appeals unincumbered by these Limitations, for the *Redress of Wrongs, in general.* Nay, the Wrongs, they apprehended, are even specified; such as Punishments *of a Regent in the Regent-house, for modestly asking a Question; or of a Disputer, for modestly disputing;* which, if we are to call them *Causes* at all, are surely *Causes of Correction.*

Nay, so far are these Statutes from *prohibiting* Appeals, that they have actually given the strongest Sanction to this Practice, by admitting the Right in very general Terms, and prescribing Rules for the Exercise of it. *Stat. 48.*

The

The subsequent Practice, till of late Years, cannot now be known, either from the Neglect or Corruption of the University *Registers*, who have not taken Care to record the Proceedings before Courts of Delegates. Only a few loose Papers have been accidentally preserved, from which it appears, that Appeals were allowed in *civil* Causes, and there is no Reason to imagine, they were discontinued in Causes of *Correction*, as no Distinction was made by the Statutes on Trials, between civil and criminal Causes.

But, if it were true in Fact, that no Appeals had been heard between 1570 and 1725, in Causes of Correction and Censure, yet this would not affect the Right, any more, than the want of Appeals from a Censure of a *peculiar* Sort, would render that single Kind of Censure unappealable. For, a Right, extending to various Particulars, will not surely be lessened from want of Opportunity or Inclination, to exercise it in *every one* of them. And such Difuse would be the less strange in the Instance before us, because the Discipline of the University hath been chiefly supported by Censures, inflicted in particular Colleges. Little of this Business is
left

left to the Vice-Chancellor ; and they who know the University, and wish well to it, will not, perhaps, desire to see more of it in his Hands.

If the supposed Disuse of Appeals in criminal Causes, shall yet be thought to have abolished the *Right* ; the Opinion, now to be produced, will at once remove such Suspicion ; even though it should not be insisted, as it may, that this pretended Prescription itself, is already destroyed, by *three* Instances of Appeals in *Causes of Correction*, the first of them in the Year 1725.

But, before I proceed any further, I would beg Leave to make one *general* Observation on what hath been now advanced. It is this : A great Civilian had expressly affirmed, “ *that*
 “ *Appeals are always admitted in those*
 “ *Courts, where the civil and ecclesiastical*
 “ *Laws are in Force, where Penance, Sus-*
 “ *pension, Deprivation, or any Censure is in-*
 “ *flicted as the Punishment of a Fault (b).*”

To all which, the Writer of *the Inquiry* gives his entire Assent : *The Observation*, says he, *is undoubtedly just*. Now the capable and impartial Reader is left to judge, whether it be not most evident, from the *Facts* here

(b) P. 26.

offered to his Consideration, that the Jurisdiction of the University is, in the properest Sense of the Word, *Ecclesiastical*; and further, whether the *Civil and Ecclesiastical Laws* be not of Force in the University Court. The Dispute then is brought to a short Issue. *Appeals are*, by the full Consent of the Inquirer himself, *to be admitted*.

I come now to the OPINION itself; of which I will only say, further, that it was not given by the great Person, hastily or negligently, but with all the Care and Deliberation, which so important a Matter deserved: As is clear, not only from his Diligence in calling for, and inspecting the *Commissary's Patent*, which, he clearly saw, was of Moment to the Determination, but from the Time he took to consider it. For the *Queries* appear to have been put some time before *Christmas*; and this Opinion bears Date the 18th of *March* following.

Qu. I. “ Whether Appeals to Delegates by
 “ the Statute *de causis forensibus*, are re-
 “ strained to *civil Causes*, in which two
 “ Parties are litigant ? ”

Ans. The Statute *de causis forensibus* is penned in such general Terms, that I think the Appeal to Delegates thereby al-

E

lowed,

lowed, cannot be restrained to civil Causes only, wherein two Parties are litigant, but doth extend to Causes of Correction and Censure; the rather because the Appeal from the Commissary to the Vice-Chancellor, is given in the same Clause, and in the same Manner with the Appeal, from the Vice-Chancellor to Delegates; and the Words of the Commissary's Patent extend, as well to Causes of Correction and Censure, as to civil Causes. Now there can be no Doubt, but that an Appeal lies from the Commissary to the Vice-Chancellor in all Cases. The Entry in Mr. *Tabor's* Register, imports, that, even in Causes of Correction, an Appeal lies from the Sentence of the Vice-Chancellor, when he doth not act jointly with the major Part of the Heads of Houses.

Qu. II. " Whether by the Statute *de Cancellarii officio*, which binds the Vice-Chancellor to proceed *secundum jus civile*, an Appeal to Delegates can now lie in a criminal Cause against a Prescription of 200 Years to the contrary, excepting only the Case of *Campbell*, Anno 1725?"

Ans. w.

Ans. There can be no Prescription in this Case, because the Question depends on Statutes, given within such a Space of Time, as the Law calls, *Time of Memory*.

Qu. III. " In case the Delegates should receive an Appeal, from the Vice-Chancellor's Court in a Cause of this Kind, and cite the Vice-Chancellor to appear before them, what the Vice-Chancellor should do? Whether appear before them, and appeal from the Sentence of the Delegates to his Majesty in Council; or not appear, but apply immediately to his Majesty by Petition; praying a Prohibition, to stop the Proceedings of the Delegates?"

Ans. Supposing that there is a Right of appealing to Delegates, from the Sentence of the Vice-Chancellor, in a Cause of Correction or Censure, no Authority can be interposed to stay the Delegates from proceeding. But if the Delegates should not have a Jurisdiction, his Majesty in Council cannot grant a Prohibition to them: and if upon an Incident of this Kind, the Vice-Chancellor should

think fit to bring the Point to a judicial Determination; the only proper Method, is by applying to some of the Courts at *Westminster*, for a Prohibition to the Delegates Proceeding.

18 March 1730.

The Reader sees, by this Determination, that the Question turns entirely upon this Point; whether, supposing there had been no Appeals in Cases of Discipline from the Year 1570 to 1725, as is asserted, but without Proof, the Intermiſſion of the Exercise of this Right for ſo long a Space, could amount to a legal Abolition of it. To which the great Lawyer, whose Opinion has been recited, replies expreſſy, NO. If any ſhould then ask, what Evidence there is of ſuch a *Right* ſubſiſting at that Time? Beſides the Statutes themſelves, inſiſted on in the Opinion, I can now refer him to the brief Hints, which compoſe the preceding Account of the Jurisdiction of the Univerſity; and which the Reader may be aſſured, are advanced on the beſt Grounds. Much more might, indeed, have been ſaid; for what I have thought fit to deliver at preſent on the Subject, is but a ſmall Part of that Evidence, which can and will

will be produced, if it be found expedient to do it. In the mean while, I may well excuse myself from this Trouble. For to talk further on these Matters to a Person, who appears so wholly ignorant of the History of the University, as the *Inquirer*, were a vain waste of Time; and to take the Pains of confuting particular Objections, founded on that Ignorance, a still vainer. Only I will condescend to put him in Mind of one essential Defect in his Argument which runs through his whole Pamphlet. It is, that he all along goes on the Supposition, that the *express* Authority of Statute, is required to make good the Claim to Appeals. And he therefore very idly lays out his whole Strength, in attempting to prove, that no such express Authority is to be found, either in the *old* or *new* Statutes. I own, I could not but smile, at first, to observe the *Inquirer* addressing himself, with so much Importance, to this Task. But, when afterwards I came to consider, the Labour and Difficulty, with which he was forced to make his Way, for this wise Purpose, through the *discouraging* *δυσπρόλητα* (for so I presently saw, he found them to be) of the *old Statutes*, I could not, upon second Thoughts, but pity his unnecessary

neceſſary Sufferings about them ; and was even tempted in my own Mind, to blame the Wag-
 gery of *the Fellow of a College*, whoſe Re-
 queſt had drawn him into all this Trouble,
 and who, to divert himſelf with him, had
 plainly put him on ſo wrong a Scent. The
 Truth is, I could not think this Uſage fair
 in his *good Friend*, to *requeſt him to draw out*
his Sentiments, on ſuch a Point; eſpecially, as
 he tells us, his Time was *ſo precious*, and
 that he had ſo little of it to ſpare, amidſt *the*
Variety of his neceſſary Avocations (i). It
 had, ſurely, been more kind to inform him
 at once, as I ſhall have the Goodneſs to do,
 that no body, who underſtood the Matter in
 Debate, ever pretended to found the Right
 of Appeal on *exprefs* Statute ; it being well
 known, that the *Right* ſtands entirely on the
 Nature of our *Juriſdiction*; in Conſequence
 of which, there has been a continued imme-
 morial Praſtice of appealing in the Univerſity ;
 ſuppoſed indeed, and admitted in both the
old and *new* Statutes, and authorized by the
 Preſcription of various Rules, for the Exer-
 ciſe of it; but neither expreſſly commanded,
 nor prohibited in either.

(i) P. I.

And

And now, having done this Act of Charity towards the *Inquirer*, which may prevent his future Pains, in puzzling and perplexing himself with the Study of the old Statutes; I shall have Reason to expect, in return, his good Leave to expostulate with him pretty freely on the Use, he proceeds to make of this unhappy Blunder. For, plumed with the vain Conceit of the University's resting their Claim on the sole express Authority of Statute, he goes on, to insult so considerable a Body of Men, in the most opprobrious Manner; as guilty of the most absurd and irreverent Behaviour, as well towards our illustrious Chancellor himself, as the Vice-Chancellor, and his Brethren, the Heads of Colleges. What I mean, is in relation to the *Grace*, which the Assertors of the Right of Appeal thought fit to propose, in order to refer the Decision of this Point to the Arbitration of the Senate. He harangues, for several Pages, on what he calls, the Irregularity and Indecency of this Proceeding; and affects besides, to cavil at the Substance of what was proposed in it. But, good Sir, where was the *Irregularity* of the Senate's presuming to confirm, by their own Authority,

rity, a *Right*, essential to their Constitution, authorized by immemorial Prescription ; and which no single Statute, they act under, in any Degree contradicts? Or, where was the *Indecency* of opposing the Exercise of that Power in the Vice-Chancellor, which is inconsistent with the very Nature of our Jurisdiction ; for which, he can plead the Sanction of *no* Statute ; and of which he was never rightfully possessed?

As to the *Grace* itself, the Substance of what it proposed, was to this Effect : “ That
 “ the Right of Appeal, from the Sentence of
 “ the Vice-Chancellor to the University in
 “ all Cases, should be confirmed to every
 “ Member of the *University* ; but that this
 “ *Right*, with regard to Persons in *statu pu-*
 “ *pillari*, should be exercised only by the
 “ Tutor of each Person, interposing in his
 “ Name.” This, it seems, gives great Offence to the *Inquirer* ; who, in his tender Concern for the Authority of the supreme Magistrate, is perfectly shocked, to think of the Consequences of such a Right being acknowledged ; and is Prophet enough to foresee, that it would bring the lowest Disgrace upon his Office, by *warranting the Arraignment of him*, as
 he

he puts it *before Delegates, upon no very important Occasions* (k). But his Fears are as groundless, as the Insinuation, which he labours to convey under them, is impudent and unjust. For, though an Appeal be claimed *ab omni gravamine utcunque illato* (which sure is nothing but reasonable, as the Statutes make no Distinction, and the Practice, as well as *Law* of the University, equally authorizes Appeals in every Case) yet, why should he throw himself into this unseasonable Panic, when all *frivolous and vexatious Appeals* are expressly provided against, by a considerable pecuniary Caution, and when the Delegates themselves are, in Effect, of the supreme Magistrate's own Appointment (l)? Would the Members of the Senate, does he think, appeal from any judicial Sentence, though

(k) P. 62.

(l) *Delegates* are nominated by the *Caput*; and the *Caput* is, in effect, appointed by the Vice-Chancellor and Heads of Colleges, who are commonly Parties in all Appellations. [See *Stat. De capite Eligendo*.] So (as the University complained, in their Remonstrance against this very Statute of *Q. Elizabeth*) "when they [the V. C. and Masters of Houses] offer wrong, and, themselves appoint Judges to redress that wrong; it is too true, which *Livy* writeth in the State of *Decemviri*, *siquis Collegam appellaverit*, (meaning Appius's Judgment) *ab eo, ad quem venerit; ita discessurum, tanquam pœniteret prioris decreti non stetisse*" C. C. C. MSS.] So little Reason is there on the Part of the Vice-Chancellor, to fear any thing from *partial Delegates*!

ever so just and statutable, *on no very important Occasion*, when a certain Expence is necessarily incurred, and when there could not be the least Hopes of Redress? Or, would any Tutor, can he imagine, who has a Character to maintain, and who is not less concerned to support good Order and Discipline, than the supreme Magistrate himself, interpose his Claim of Appeal for his Pupil, without, at least, some fair and reasonable Grounds?

But the Insinuation, as I observed, is still more impudent, than his Apprehensions are groundless. For what he would covertly signify under this impertinent Sollicitude for the Honour of the supreme Magistrate, is, that the Delegates, who are the Representatives of the collective Body of the University, are unworthy to take Cognisance in any Case of the Acts of their *Officer (m)*: Nay, that the

(m) The *Inquirer* hath even had the Hardiness to advance this in the plainest Terms. He harangues at large, from p. 9. to 13. on the Impropriety of Appealing from the *Determination of a Superior to an Inferior*; and, in another Place, p. 39. derides the Notion of *Citing the supreme Magistrate before more supreme Delegates*. But how different were the Sentiments of a late learned Civilian on this Head, from those of this *little academical Lawyer*! Speaking of Mr Campbell's Case, in 1725. "There is, says he, a Subordination of Jurisdiction in the University. The Vice-Chancellor's Jurisdiction is *inferior* to that of the Senate; and upon Mr C—'s saying, that he appealed to the University, the *inferior Jurisdiction* ceased and devolved to the Senate, even before the Inhibition. And, af-

Members

Members of the Senate itself are a Company of factious, disorderly, licentious Boys; who are impatient of any Authority themselves, and would be sure to concur in all Cases to countenance the Irregularities of one another, or of the Youth of the Place; by setting them loose from all Restraint, which the Statutes and Discipline of the University have provided against them. There is something so outrageously insolent in this Abuse of the Body of the University; a Body consisting of *three or four hundred Persons*; the youngest of which is of the Degree of *Master of Arts*; almost all of them *Clergymen*; and the greater Part of *equal Age*, and it may therefore be presumed of *equal Prudence*, as many of the Heads themselves; that I should be cautious of charging it upon him, if he had not expressed himself in Terms too clear to be mistaken. For he has the Assurance to advance in so many Words, that "*if the*

"terwards in considering the Proctor's Inhibition; *upon the Appeal*, the Proctors represent the University, and are in that Case superior to the Vice-Chancellor—And I am of Opinion, that the Delegates in Mr C—'s Cause may upon the Proctor's Applying to them, *primo et ante omnia* reverse the whole Proceedings against him, in the V. C's Court, *as an Attempt upon the University's Jurisdiction*; and may likewise inflict such Censure, as the Statutes empower them to make use of, for the Breach of the Inhibition; all Inhibitions being by Law, *sub pœnâ juris et contemptûs*. Dr. ANDREWS.

" *Person who apprehends himself to be aggrieved,*
 " *ed, may happen to be a Member of the*
 " *Senate, and, as such, may possibly bear*
 " *with Indignation the Thought of having any*
 " *Part of his Conduct judicially animadverted*
 " *upon; if it be further considered, that his*
 " *particular Friends and Acquaintance may*
 " *possibly think the same in his Case, and*
 " *that all the Advocates for, and the warm*
 " *Asserters of Independency will be sure to*
 " *think so in every Case, I do and must say,*
 " *&c.*" And, again, in the Words of the
 very provident Mr. *Tabor*, a little doting Re-
 gistrary of the University, a Century or two
 ago; whose Mumpings this Writer has the
 Confidence to oppose, to the united Sense of
 the University, at this Day: "What dan-
 " gerous Cure does that State hazard, when
 " for the sullen Distemperature of one
 " active Member, the ruling Head must
 " bleed, that suffereth enough otherwise; and
 " all the discontented Parts of the Body must
 " sit in Judgment on it; nay, when *Sense*
 " must disapprove or disallow the *Acts of*
 " *Reason?* If this Appeal be suffered and
 " countenanced to pass current, farewell the
 " Power of Chancellor and Vice-Chancellor;
 " *my young Masters of the Regent House* will
 " and

“ and must judge, examine, and rule all; yea,
 “ *their* Censures or Judgments must stand or
 “ be disallowed at their Will and Pleasure.
 “ Good Sir! by all means labour to smother
 “ this *Hydra*; it will have more Heads than
 “ we shall overcome, and breed a greater
 “ Mischief than we are aware, in these Times
 “ of Liberty and Discontent (*n*).”

Such are the Sentiments of this forward In-
 quirer of the Senate of the University of *Cam-*
bridge: Sentiments, which must needs create
 in the Breast of any Man of Sense, who is
 a meer Stranger to us, the strongest Resent-
 ment; and for his public Declaration of
 which, were the Author known and confi-
 derable enough, he would judge him to de-
 serve the severest Censure, the University has
 it in its Power to inflict. But what must those
 think, who have an Opportunity of knowing
 the *Characters* of the Men, whom he thus
 vilely traduces? Almost all of them Fellows
 of Colleges, many of them Tutors, whose
 Sobriety and good Behaviour have recom-
 mended them to Places of Trust and Profit in
 their respective Colleges: Men, who are un-
 der the Obligation of Oaths, to maintain and
 promote statutable Discipline, and Regularity;

(*n*) P. 7c,

who

who are trained in the Habit of Restraining and Correcting academical Disorders of all Kinds ; and whose Situations and Interests require them to be as watchful to support just Authority and good Order, at least, as the Heads of Colleges, or the Officers of the University themselves. And the Censure is the more grievous at this time of Day, when, by the Confession of the Partizans of the Heads themselves (o), extorted by the very Evidence of Fact and Truth, there never was a Time in which the elder Part of the University were more Sober, Temperate, and Regular ; when fewer Excesses of any Kind were chargeable on the Fellows of Colleges ; or, indeed, when they were more prudent and exemplary, in their Behaviour, in all respects. But the Charge is not only unjust, but has a direct Tendency to discredit and destroy that reasonable Authority in the University, which this

(o) We have this Confession from the candid Writer of *Considerations on the late Regulations, &c.* " I must enter, says he, upon this Subject with acknowledging, as I do with equal Truth and Pleasure, that there never was, within my Remembrance, nor, I believe, within any one's Memory, a set of more able and industrious Tutors than we have at Present ; more capable of Discharging that useful Office or more diligent and careful in the Discharge of it," p. 12. And, again, " I think there prevails in general and thro' all Degrees among us, a great Disposition to Sobriety and Temperance," p. 14.

Prater, if he means any thing by his Talk, would seem ambitious to support. For how is the great Affair of Education and good Government in this Place to be carried on, but by Means of those very Persons, whom he would represent in so ignominious a Light? For, certainly, how much soever the University may owe to the Heads of Colleges, in their Capacity of *Legislators*, yet, for the *Execution* of those Laws which it seemeth Good to their Wisdoms to enact, they must still depend on the Concurrence, I had almost said, on the sole Authority of their *Inferiors*. And how shall such Authority be kept up, when they are thus upbraided, as Abettors of every Act of Licence; and represented to the younger Part of the University, as Patronizers of that ungoverned independent Spirit, which it is their Office to restrain? Nor can I think so ill of the Policy of these great Lawgivers, as to believe that they will chuse to concur with this officious *Inquirer*, in representing them in such a Light. For what will become of that balmy Ease and Quiet, in which these sovereign Guides of Youth so delight to wrap themselves, if the Care of Government must, after all, devolve on their Shoulders; when a Course of injurious Calumnies shall have disabled their subordinate Ministers

Ministers from taking their Place, and bearing, as at present they most commonly do, the full Weight of it?

But to return to the *Grace* itself, from which this Reviler's Treatment of the whole Body of the University has a little diverted me. He labours much, as I observed, to impress on the Reader's Mind, the Opinion of the frightful Consequences, with which a Right of Appeal in all Cases would be attended: and to give a Sanction to these Fears, he alledges the Authority of *the learned Gentlemen of the long Robe*, who, it seems, have pointed out the Absurdity of such a Practice and the pernicious Effects of it (*p*). But what is all this tragical Declamation to the Purpose? where is the Sense, as I before asked, in supposing the University Senate would concur in every Attempt of its idle and disorderly Members, to get themselves relieved from a deserved and statutable Censure? Or, how should those *learned Gentlemen*, whose Robe he still hangs upon, be better able to judge of the Expediency of this Practice, than the Senate of the University itself? Indeed he thinks the Absurdity of this Right of calling the supreme Officer of the University to Account for his judicial Determinations, the

more glaring, in as much as, even in private Colleges, *no Act of Discipline of the Head*, he fancies, *was ever liable to be reversed by any of the subordinate Members*: Nay, he is persuaded, that his good Friend, the Fellow of a College, for whose Instruction all this is designed, *were he even authorized to new model the Statutes of his own College, would not chuse to vest in his Brethren, the Fellows, such a Power of controlling the Acts of the Master* (q). What the Colleges are, which are here glanced at, and which leave the Master full Power to exercise every Act of Discipline without Control, the *Inquirer* himself best knows. For my Part, I have always understood, that *Acts of Censure*, in all private Societies, such Acts, I mean, as are of Consequence to the Reputation and Interests of their Members, are not left to the Caprice of the Master, but are passed by the joint Authority and Concurrence of the Society itself. Unless, perhaps, I am to except one *little College*; in which, it is said, the Master claims to himself this sovereign and uncontrollable Authority. But, then this is no fair Precedent. For the Members of the College have nothing to apprehend from a

licentious and wanton Abuse of *such Power* ; as well on Account of the known Candour, Equity, and Moderation of the worthy President of that Society, as for that a few Exertions of it would leave him no Subjects to preside over.

But whatever may be the Case of this *one* Foundation ; the despotic Form is not, I believe, statutable in any other. Nay, the Authority of the Fellows to control the Acts of their Head, in some Colleges, I have been told, goes so far, that they are even impowered, in Case of an *utter Inability* (such as may arise from extreme Folly, Dotage, or the like) *to govern prudently*, to remove him forthwith from his Place. And surely this must be deemed a wise and sober Institution ; at least, were I *authorized to new model the Statutes of any College which wanted it, it is such an one, as I should certainly chuse to vest in it.*

But there is one Circumstance in the *Grace*, which, it seems, provokes his more *especial Dislike*. And, unluckily, it is one, which any other, who considered the Tenor of it, would be likely enough more especially to approve ; as shewing the singular Moderation, and good Temper of the Persons, who proposed

posed the *Grace*, and as studiously contrived to prevent all Imaginable Abuses of it. It is, that *the Right of Undergraduates to Appeal, should be exercised no otherwise, than by the Interposition of their Tutors (r)*. A Provision of great Prudence; and which the Proposers of the *Grace*, in their Concern to support Authority, and just Government, purposely made to obviate the only Abuses that could be possibly apprehended from it. For, if the wanton Exercise of the *Right to Appeal*, were to be feared from any Quarter, it certainly must be from the inferior Members; whose Youth and Inexperience might make them forward to appeal from any Censure, however reasonable; and of which therefore, the *Tutor* of the Person censured, who is under all the Ties of Interest and Duty, to act discreetly and warily, is left to judge: Yet this Provision, wise and moderate as it is, *appears to the Inquirer extremely strange; because, by Means of such a Limitation, a Tutor might prevent his Pupil from appealing in any Case, though the supreme Magistrate of the University would be empowered to prevent it in none*. As if the Judge who passed the Sentence, and was therefore concerned to support it, were as

(r) P. 65.

fit to determine, whether the Party aggrieved should have the Liberty to appeal from it, as an indifferent Person, who had no Concern at all in it. Nay the Tutor, as was observed, would be obliged, by a Regard to his own Authority and Character, and (I would add, but that the *Inquirer* is pleased to make no Account of that (*s*) *Obligation*) by the *Religion of an Oath*, to proceed with all imaginable Caution, in advising him to such a Step.

In every View, then, this Objection to the *Grace* must appear very unaccountable. And

(*s*) “ You will urge — that, as a previous *Oath* must be taken “ by the Tutor, that he believes in *his Conscience*, that his Pupil “ has a just Cause of Appeal, all Appeals would by this Means “ be prevented, but such as were founded upon good Reasons. “ But the Force of this Argument will not be thought very “ great, if, &c.

Reader, I can easily guess the Sentiments, which must arise in thee, at a Sight of this shocking Paragraph. But think not, I have abused thee in this Citation. They are the Author's own Words, as they lie in p. 65. of the *Inquiry*. Well, but his Reason. Why, “ if it be remembered, that, though Oaths of “ this Kind were exacted in Order to prevent the frequency of “ Appeals, they by no Means had their proper Effect, the “ same Number having been commenced for the three Years “ next after this Regulation, as in that towards the Close of “ which it was first made.” This Provision of *Oaths* had not, he says, *its proper Effect*. And how does this appear? Why, *because Appeals were as frequent afterwards, as before*. Now any other Man would, surely, have inferred from hence, that “ therefore the Appeals made were not without good Reason ” Not so the *Inquirer*. He is of another Spirit. Rather than give any Quarter to *Appeals*, let every Tutor in the University be an abandoned perjured Villain. In very Tendernefs to this unhappy Writer, whoever he be, I forbear to press him farther on such a Subject.

the rather, when the Reader understands, that this Clause was with the greater Readiness and Pleasure inserted into it, as the Vice-Chancellor himself, whose Goodness and Candour require no Encomiums of mine, had intimated, and even declared, that a Provision of this Kind, was all the Restriction upon *the Liberty of Appealing*, which he wished to see made to it. For this excellent Person was so much convinced of the Propriety, and Expediency of this Claim in general, that he very frankly professed his Approbation of it, and only wanted to secure his Authority, where indeed the only Danger lay, from a *torrent of Appeals, which, as he apprehended, might pour in upon him from the Younger Sort*. So that, I think, we shall hear no more of this Objection; and I am even not without the fond Hopes, that, after this Information, the *Inquirer* himself, whatever *Displeasure* he might conceive at this Part of the *Grace* before, will now grow into good Humour with it.

After all, one cannot but suspect, that the *Inquirer* must have some better Reason for his strong Antipathy to this *Grace*, than any that has yet appeared. The violent Heat, it puts him into, whenever he touches upon it, demon-

demonstrates, there must still be something at the Bottom of this Matter, which is the Object of just Offence. In looking narrowly for it, I found it at last, half smothered under a very shrewd and indirect Insinuation, which I shall bring to Light after having presented the Reader with his own Words.

“ I see not how a Grace of this Kind could
 “ be offered, consistently with the Resolu-
 “ tion said to have been taken at one of your
 “ first Meetings, to assert the Right of Ap-
 “ peal in such a Manner, as was warranted
 “ by the Statutes of the University: Nor am
 “ I less able to reconcile it with those Profes-
 “ sions of Deference and Respect, which at
 “ the same Time were thought proper to be
 “ made for our great and illustrious Chancel-
 “ lor. No Person would receive a greater
 “ Pleasure than myself, from seeing all the
 “ Members of the University, however divid-
 “ ed in other Points, agreed in entertaining
 “ the highest Sentiments of Regard and Ve-
 “ neration for him; but I confess, that this
 “ is a Pleasure I am not very likely to have,
 “ till one Set of Men shall be pleased to give
 “ clearer and less questionable Testimonies of
 “ this, than by opposing every useful Regula-
 “ tion he recommended, and endeavouring to
 “ lessen

“lessen and curtail an Authority, which is
 “only vested in the Vice-Chancellor, as his
 “Representative and Locum-tenens (t)”.

Here, then, we have all the Venom of his Heart, injected into one malignant Paragraph; which, under the Gilding of a Compliment, is to do its Office without Offence. And yet, it is plain enough, what he would insinuate. 'Tis neither more nor less, than that the Advocates for this Right of Appeal, are an unquiet, factious set of Persons; bent on opposing all Measures, that tend to promote the Good of the University; and, to say all in one Word, listed in a vile Cabal to dishonour, revile, and abuse their Chancellor himself. The Gentlemen, against whom all this is levelled, must, I am persuaded, hold such senseless and licentious Calumnies in such Contempt, that I should not merit their Thanks, for attempting seriously to confute them. And yet I cannot help saying for them, that the *Resolution*, hinted at in this Place, was drawn up with so respectful a Regard to the Authority of the Statutes, and to the Honour and Dignity of our great Chancellor, as, one should think, might stop the Mouth of Malice it-

self. Yet all this can be overlooked by our candid Inquirer. And on what Pretence? why, because some of those Persons, who came to such a *Resolution*, had different Sentiments, it seems, of the Expediency of the late Regulations from this Writer; and because this Claim of Appeals tends to lessen the Authority of the Vice-Chancellor. For this he modestly calls *opposing the Chancellor, and curtailing his Power*.

Well then, the Crime is now out; and to say the Truth, if it be a Crime, the University is deeply involved in it. For, when the late *Regulations* were first proposed to the Consideration of the Senate, a considerable Majority were clearly of the same Opinion, as these Culprits: and, with Regard to the present Claim, the University may be almost said to be *unanimous* in supporting it. But what, in the mean Time, must be this Scrib-
bler's Sentiments of that most noble and illustrious Person, for whose Honour he here professes himself concerned; and of whom, it seems, he can think so unworthily, as to believe, that a Liberty in judging, concerning the Expediency of some academical Laws, which he had the Goodness to propose to them, should give Offence to one, who has
no

other Aim, than to serve the University, in a Manner the most agreeable to their best Judgments; and which, I am satisfied, they used the more freely on a full Persuasion, that such Liberty could not be taken as an Instance of Disrespect to him. This I should not doubt to call, of itself, a sufficient Confutation of the idle Calumny. But it comes with the worst Grace imaginable, from a declared Enemy to *the Right of Appeals*; who must know, if he be at all acquainted with what passed at that Time, that the principal Reason, which induced the University to oppose the *Regulations*, was the just Apprehension they were under, of an Encroachment on this *very Right*; not indeed from the Chancellor, who had no such Intention, nor even any Knowledge of it; but from certain forward Directors in that Affair, who gave the *clearest and least questionable* Proofs of their designing to make the *new Laws* the Instruments of their own Tyranny, in this Respect. So that, if any Offence *was* given by the University on that Occasion, the Blame of it should fall elsewhere; and not on those, on whom it is here so invidiously cast: Persons, who, on every Occasion, have testified the sincerest Honour for their Chancellor, who venerate

H

him

him, as the Protector and Patron of the University ; and would humbly co-operate with him, to the Attainment of those good Ends, which it is his sole Endeavour to promote.

But what follows, if possible, is still worse. A *second Charge* against the University, is, that they are *endeavouring to lessen, and curtail an Authority, which is only vested in the Vice-Chancellor, as his Representative and Locum tenens*. What the collective Body would return to this Accusation, I pretend not to say ; I have no Commission to answer in their Name. But for myself and those, whose Thoughts I have the Opportunity of knowing on this Matter, I answer boldly thus : That we are not in the least apprehensive of giving Offence to this great Person, who is more sollicitous for the Maintenance of the just Rights of the University, than any other Member of it, by any respectful and moderate Endeavours, to assert our own reasonable Privileges ; that we are well assured, he approves, and is ready to countenance all such honest Endeavours ; and that, lastly and chiefly, we are *therefore* earnest in our Endeavours to lessen an Authority (if that must be called *lessening*, which is but preventing its being usurped) because it *is* vested in, and
must

must be constantly exercised, *by his Representative*. For, whatever Liberties he may presume to take with the Assertors of this Claim, I will venture to assure him, that, were unappealable Power itself to be exercised only by our Chancellor, who is too high in Rank, and too noble in Nature, to be under any Temptations of abusing it, though we might still think the Authority unreasonable and dangerous in itself, we should esteem ourselves in perfect Security under him, and could safely trust the Administration of it to his Care. But as the Person, who, by our Constitution, is vested with it, is, and must be a very imperfect *Representative* of the Chancellor, in this, as well as other Respects, we hope to be forgiven by every equitable Judge, if we are not forward to *compliment* ourselves out of our Privileges; and have little Inclination to lodge our Liberties in less worthy Hands.

After all, one would be glad to know a little more explicitly of this Writer, since he professes himself so little satisfied, with the Conduct of the University, what those *clearer and less questionable Testimonies* of their Regard for the Chancellor are, which he so loudly calls for; and the Want of which, it seems,

hath made his Life so distasteful and uneasy to him. And I think, I durst almost take upon me to guess at them. No doubt, they are such as these : “ That the University Senate would be pleased to make no Distinction in any Case, between the supreme Magistrate and his Representative, nay, and his Representative’s *Representatives* — “ That they would courteously give that Honour to his *Locum tenens* or *Locum tenentes*, without perhaps one single Merit to justify such a Claim, which the illustrious Rank and Dignity of their Chancellor himself, his eminent Virtues, and Services to the University, all, conspire to challenge and demand from them : — In a Word “ that the University would offer themselves as willing Instruments, to carry into Execution every paltry Project, every low and selfish Design, which little Men in Office are apt to form for themselves; and all this under the Notion of its being a Tribute of Respect to the supreme Magistrate, and an Instance of their Veneration for him.

Such as these, I can readily believe are the *Testimonies* of Respect, the *Inquirer* wishes to see paid to the Chancellor, and which, no doubt, would administer that sincere Pleasure,
which

which at present he divines (and, I trust, truly) *he is not very likely to have*. But does he think, the Chancellor is to be abused by this thin Pretence of Respect? that true Greatness is to be taken by this meer Outside of an officious and false Compliment? On the other hand, I dare be confident that nothing is more disgusting to him than such Sycophancy; and that he is so far from allowing this Conduct in the *Inquirer*, that he even disdains to have his Cause and Dignity so defended. “ For tho’ (to use my Lord
 “ *Bacon’s* Words on a like Occasion) I observe in his Book many Glosses, whereby
 “ the Man would insinuate himself into
 “ his Favour; yet I find it to be ordinary,
 “ that many pressing and fawning Persons do
 “ misconjecture of the Humour of Men in
 “ Authority; and many times seek to gratify
 “ them with that, which they most dislike.”

But the Virulence of these malignant Calumnies hath held me, on a very unnecessary Argument, too long: I return again to the *Inquirer*, to whom I have but one Word or two more to say, and shall then take my final Leave of him.

You have talked, Sir, very importantly of the pernicious Consequences of a Right of Appeal in the University. The Reasons, on
 which

which you would ground these so anxious Fears, have been examined, and exposed, as they deserves. But granting that some slight, nay, that some considerable Inconveniencies might arise from it; were this any good Argument, think you, against the Subsistence of such a Right? What would become of all the Liberties, which just Government leaves us, nay, of the Blessings and Privileges which indulgent Nature bestows upon us, if the accidental and occasional Abuse of them were thought a Reason sufficient to extort them out of their Hands? Should you not have considered, that *a Right of Appeal* is one of the most important and valuable Rights, which Mankind enjoy in Society, and which, indeed, is almost essential to the very Being of it? And would you have this sacred Claim, *patronam illam et vindicem libertatis*, as a great Antient calls it, rudely and inhumanly wrested from us, on the frivolous Pretence of some possible, or even probable Abuse? Had you been as conversant in the Civil Law, as an *Inquirer* into such a Question should have been, you might have found Cause to entertain very different Opinions of it. For the great Masters in that Science were as well aware, as you can be, that such a Right was

liable to some abuse. But which of them ever thought this Consideration, of Force enough to decry or abolish it? On the other hand, they *acknowledge the Inconvenience*, yet assert and vindicate the *Use*. Give me leave to refer you to one Passage, (you will find it *L. 1. D. De Appell.*) very exprefs to this Purpose. “ Appellandi usus quam fit frequens quamque NECESSARIUS, nemo est qui nesciat: quippe cum iniquitatem judicantium vel imperitiam re corrigat; *licet nonnunquam bene latas sententias in pejus reformet*, neque enim utique melius pronuntiat, qui novissimus sententiam laturus est.” What will you say, now, to this?

That *Ulpian*, who affirmed it, was a factious, turbulent Boy? one of those whom you disgrace under the Name of the *warm, Assertors of Independency*, and *who bear with Indignation the Thought of having any Part of their Conduct judicially animadverted upon*? I presume to think, you would hardly venture on this Assertion. Nay, I please myself with hoping, that when you have well considered this so sage and venerable Sentence of an antient Lawyer, you will even be disposed to abate of your Vehemence in declaiming against such, as go on *his Principles* at this Day.

Seriously,

Seriously, Sir, it is a bad Cause you have engaged in. And, in meer Kindness to you, I would wish you to relinquish it with all Speed. The Claim itself of *Appeals*, as I have had the Honour to shew you, is of long and antient Date; indeed as *antient* as the Constitution of the *English* Government itself. Of what Consequence you may chance to be in your political Capacity, it is impossible for me to say; if you are of any, and should proceed in these *Inquiries*, I should go near to apprehend that the *House of Commons* itself might take Umbrage at them; for the Rise of that great Part of our Constitution is not usually, I think, carried higher than the Point, from which the Right of Appeal hath here been deduced. Or, do you think you may safely make free with the Constitution of an University, tho' it were dangerous meddling with that of the State itself? This may be true, indeed; but where is your Generosity in the mean time? Why should the Thoughts of Impunity encourage you to such an Attack on the Rights and Privileges of a Body of Men, who, tho' unable to punish such Offences against themselves, as they deserve, have yet been generally secured from all Outrage by the very Regard and Reverence,

which

which the Public hath ever paid to them? In a Word (for I would not hold you longer from your *neccessary Avocations*) it may be worth your *Inquiry*, when you shall think fit to sally forth on another Adventure, what the Learned of *Great Britain* have done, that they should have their Liberties written and inveighed against in so outrageous a Manner; and amidst the securest Enjoyment of every civil Right under the justest and most equal Government in the World, what peculiar Circumstances of Offence have so inflamed the Guilt of the Scholars of this Land, that they, of *all* his Majesty's good Subjects, should deserve to be the only Slaves.

F I N I S.

Ex. E. O. H.